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# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil, Gas and Mining

JOHN R. BAZA  
Division Director

July 21, 2016

CERTIFIED RETURN RECEIPT  
7015 0640 0001 4528 8205

Ellis Brown  
Brown Brothers Construction Company  
P.O. Box 249  
Loa, UT 84747-0249

Subject: Proposed Assessment for State Cessation Order # CO-2016-60-03, Brown Brothers Construction Company, Natural Buttes Mine, S/047/0108, Uintah County, Utah

**Response Due By: 30 Days of Receipt**

Dear Mr. Brown:

The undersigned has been appointed by the Division of Oil, Gas & Mining as the assessment officer for assessing penalties under R647-7.

Enclosed is the proposed civil penalty assessment for the above referenced cessation order. The cessation order was issued by Division inspector, April Abate, on March 29, 2016 (received April 12, 2016). Rule R647-7-103 et. seq. has been utilized to determine the proposed penalty of \$3,850. The enclosed worksheet outlines how the civil penalty was assessed.

By these rules, any written information which was submitted by you or your agent within fifteen (15) days of receipt of cessation order has been considered in determining the facts surrounding the violation and the amount of this penalty.

Under R647-7-106, there are two informal appeal options available to you. You may appeal the 'fact of the violation', the proposed civil penalty, or both. If you wish to informally appeal you should file a written request for an informal conference within thirty 30 days of receipt of this letter.



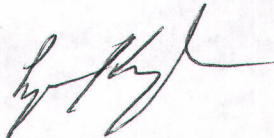


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The informal conference will be conducted by a Division-appointed conference officer. The informal conference for the fact of the violation is distinct from the informal assessment conference regarding the proposed penalty. If you wish to review both the fact of the violation and proposed penalty assessment, you should file a written request for an assessment conference within thirty (30) days of receipt of this letter. In this case, the assessment conference will be scheduled immediately following the review of the fact of the violation.

**If a timely request for review is not made, the fact of the violation will stand, the proposed penalty will become final, and will be due and payable within thirty (30) days of the date of this proposed assessment (by August 24, 2016).** Please remit payment to the Division, mail c/o Sheri Sasaki.

Sincerely,



Lynn Kunzler  
Assessment Officer

LK:pb

Enclosure: Proposed assessment worksheet

cc: Sheri Sasaki, Accounting  
Vickie Southwick, Exec. Sec.

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**WORKSHEET FOR ASSESSMENT OF PENALTIES**  
**DIVISION OF OIL, GAS & MINING**  
**Minerals Regulatory Program**

NOV / CO #: CO-2016-60-03

PERMIT: S/047/0108

COMPANY / MINE Brown Brothers Construction / Natural Buttes Mine

ASSESSMENT DATE July 21, 2016

ASSESSMENT OFFICER Lynn Kunzler

**I. HISTORY (Max. 25 pts.) (R647-7-103.2.11)**

- A. Are there previous violations, which are not pending or vacated, which fall three (3) years of today's date?

PREVIOUS VIOLATIONS

EFFECTIVE DATE

POINTS

(1pt for NOV 5pts for CO)

None

**TOTAL HISTORY POINTS 0**

**II. SERIOUSNESS (Max 45pts) (R647-7-103.2.12)**

NOTE: For assignment of points in Parts II and III, the following apply:

1. Based on facts supplied by the inspector, the Assessment Officer will determine within each category where the violation falls.
2. Beginning at the mid-point of the category, the Assessment Officer will adjust the points up or down, utilizing the inspector=s and operator=s statements as guiding documents.

Is this an EVENT (A) or Administrative (B) violation? Event (A)  
(assign points according to A or B)

**A. EVENT VIOLATIONS (Max 45 pts.)**

1. What is the event which the violated standard was designed to prevent?  
Activity outside/without appropriate approvals, environmental harm
2. What is the probability of the occurrence of the event which a violated standard was designed to prevent?

<u>PROBABILITY</u>	<u>POINT RANGE</u>	<u>PROBABILITY</u>	<u>POINT RANGE</u>
None	0	Likely	10-19
Unlikely	1-9	Occurred	20

**ASSIGN PROBABILITY OF OCCURRENCE POINTS 20**

**PROVIDE AN EXPLANATION OF POINTS:** As per the Inspector, 27.7 acres have been disturbed. The permit is only for 10 acres. Since the violation occurred, points were assigned accordingly.



3. What is the extent of actual or potential damage?: 17.7 acres beyond the 10 permitted acres were disturbed..

**ASSIGN DAMAGE POINTS (Range 0-25) 20**

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

**PROVIDE AN EXPLANATION OF POINTS:** This violation more than doubled the permitted acres. Without first submitting a NOI for the increased disturbance, the Division did not have the opportunity to evaluate impacts and mitigation plans for soils, vegetation, wildlife or cultural resources. Points therefore assigned toward the upper portion of the range.

**B. ADMINISTRATIVE VIOLATIONS (Max 25pts)**

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement? \_\_\_\_\_  
Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

**ASSIGN HINDRANCE POINTS \_\_\_\_\_**

**PROVIDE AN EXPLANATION OF POINTS: \_\_\_\_\_**

**TOTAL SERIOUSNESS POINTS (A or B) 40**

**III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)**

LEVEL of NEGLIGENCE.	Point Range
No Negligence (Was this an inadvertent violation which was unavoidable by the exercise of reasonable care?)	0
Negligence (was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care?)	1 - 15
Greater Degree of Fault (was this a failure to abate any violation or was economic gain realized by the permittee?)	16 - 30

STATE DEGREE OF NEGLIGENCE: Negligent

**ASSIGN NEGLIGENCE POINTS 15**

**PROVIDE AN EXPLANATION OF POINTS:** While the inspector indicated that it was ordinary negligence, it was also argued that there was at least potential for economic gain in as much as additional permit fees or bonding was not provided. Points are therefore assigned at the maximum of the 'Negligent' range.



**IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)**

(Either A or B) (Does not apply to violations requiring no abatement measures, or violations not abated at the time of assessment)

**Has Violation Been Abated?** No, Therefore good faith point are not assessed.

- A. **EASY ABATEMENT** (The operator had onsite, the resources necessary to achieve compliance of the violated standard within the permit area.)

	<u>Point Range</u>
Immediate Compliance (Immediately following the issuance of the NOV)	-11 to -20
Rapid Compliance (Permittee used diligence to abate the violation. Violation abated in less time than allotted.)	-1 to -10
Normal Compliance (Operator complied within the abatement period required, or, Operator requested an extension to abatement time)	0

- B. **DIFFICULT ABATEMENT** (The operator did not have the resources at hand to achieve compliance, or the submission of plans was required prior to physical activity to achieve compliance.)

	<u>Point Range</u>
Rapid Compliance (Permittee used diligence to abate the violation. Violation abated in less time than allotted.)	-11 to -20
Normal Compliance (Operator complied within the abatement period)	-1 to -10
Extended Compliance (Operator complied within the abatement period required, or, Operator requested an extension to abatement time) (Permittee took minimal actions for abatement to stay within the limits of the violation, or the plan submitted for abatement was incomplete.)	0

EASY OR DIFFICULT ABATEMENT? \_\_\_\_\_

**ASSIGN GOOD FAITH POINTS** 0

**PROVIDE AN EXPLANATION OF POINTS:** Abatement work not completed as of the preparation of this assessment.

**V. ASSESSMENT SUMMARY (R647-7-103.3)**

I.	TOTAL HISTORY POINTS	<u>0</u>
II.	TOTAL SERIOUSNESS POINTS	<u>40</u>
III.	TOTAL NEGLIGENCE POINTS	<u>15</u>
IV.	TOTAL GOOD FAITH POINTS	<u>0</u>
	TOTAL ASSESSED POINTS	<u>55</u>
	<b>TOTAL ASSESSED FINE</b>	<b><u>\$3,850.00</u></b>